
In Re the Arbitration between:

BMS File # 05-PA-1076

Carver County,

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Law Enforcement Labor Services, Inc.

Union.

Pursuant to **Article 5** of the collective bargaining agreement effective January 1, 2004 through December 31, 2006, the parties have brought the above captioned matter to arbitration.

James A. Lundberg was selected as the neutral arbitrator from a Minnesota Bureau of Mediation Services list of Arbitrators.

The parties stipulated that all steps of the grievance procedure were properly complied with and the grievance is properly before the Arbitrator for a final and binding determination.

The grievance was filed January 17, 2005.

A hearing was conducted on October 4, 2005.

Briefs were filed on November 4, 2005. The parties agreed to extend the contractual time limit for completion of the award.

APPEARANCES

FOR THE EMPLOYER

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FOR THE UNION

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ISSUE:

Union's Issue Statement:

- 1. Did Carver County violate the labor agreement when it denied overtime pay to Grievants Jason Breunig, Brian Dilley, Stephen Glaser, Eric Kittelson, Tim Robbins, Scott Tatge, and Jeff Trick, when they worked more than 2080 hours in 2004?*

Employer's Issue Statement:

- 1. Are the seven (7) grievances dated January 17, 2005 substantively arbitrable?*
- 2. Did the County violate Article 7 or Article 21 of the Labor Agreement or a past practice when it did not pay the seven (7) Grievants overtime pay at the end of 2004?*

FACTUAL BACKGROUND:

Between 1986 and 2003 Carver County used 2080 hours as a standard for determining at year end whether employees owed time to the County or employees were due pay or time off.

During the 2004-2006 contract negotiations the Employer gave the following written notice to the Union:

7.1 NOTICE: Effective with the expiration of the current collective bargaining agreement, overtime will be calculated in accordance with **Article 21.1**, and the County will discontinue utilizing 2,080 hours to determine whether employees owe time to the County or the County provides pay or time off to employees.

The Union proposed addition of the following language to the end of **Article 21**, **Section 21.1** of the contract, during the 2004-2006 negotiations:

At no time shall an employee be required to work in excess of 2080 hours in a calendar year without being compensated at the overtime rate.

The Union proposal was not agreed to by the Employer and was not added to the contract in Arbitration.

By letters dated January 17, 2005 the Union submitted identical grievances on behalf of Deputy Jason Breunig, Deputy Brian Dilley, Deputy Stephen Glasser, Deputy Eric Kittelson, Deputy Tim Robbins, Deputy Scott Tatge and Deputy Jeff Trick. The grievances which have been consolidated into one grievance made the following claims:

- That the deputies worked in excess of two thousand eighty (2080) hours in calendar year 2004 and were not paid at the overtime rate for the excess hours.
- The County's action violates **Article 7** and **Article 21** of the labor agreement as well as long standing practice of the Sheriff's Office.

The grievances asked for the County to immediately pay the deputies the overtime they were due for all hours worked in excess of 2080 in 2004.

The grievances, which are being treated as one grievance, were denied by the Employer.

SUMMARY OF UNION'S POSITION:

The Union argues that the grievance is substantively arbitrable because it is a disagreement as to the interpretation or application of the specific terms and conditions of the contract as required by **Article 5** of the collective bargaining agreement. The Union

asserts that **Article 7** states that the normal work year shall be two thousand eighty hours (2080) and the language has been a part of the contract since 1986. **Article 21** defines overtime as "...hours worked in excess of the normal schedule during the normal schedule period." Normal schedule is not defined in the contract. The Union disagrees with the Employer on the appropriate interpretation and application of **Article 7** and **Article 21**.

The Union contends that the Employer violated **Article 7** and **Article 21** of the Labor Agreement when it refused to pay the grievants overtime for all hours worked in the 27th pay period of 2004. The County has always reconciled the work year using 2080 hours. In 2004 the number of pay periods worked by the deputies was 27 instead of 26, which is the normal number of pay periods in a year. The County reconciled the normal 2080 hour work year in the 26th pay period. Deputies were informed of time they owed the County or the County owed them in 2004 and were told to make arrangements with Sergeant Potts before December 12, 2004 to make up time or take time off.

The Employer did not treat the 27th pay period the same as other pay periods. Pay period 27 was treated as if it was independent of any fiscal or calendar year. **Article 9** provides for a set number of vacation days to be earned per year depending upon the employee's length of service. The County did not credit vacation accrual for employees in the 27th pay period. All vacation accrued through the 26th pay period.

Under **Article 12** of the labor agreement, overtime is to be paid for hours worked in excess of the normal schedule during the normal schedule period. Deputies are generally scheduled 2080 hours per year and know their entire work schedule for a year

at a time. The deputies should be paid overtime for the time they worked in excess of their normal schedule of 2080 hours in 2004.

SUMMARY OF EMPLOYER'S POSITION:

The Employer argues that the substance of the grievance is not arbitrable because the contract contains no language requiring the Employer to pay overtime for hours in a calendar year worked in excess of 2080. The Arbitrator has no authority to decide the grievances. **Article 5.5 (A)** says "The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement." Furthermore, the arbitrator's decision "shall be based solely on the arbitrator's interpretation or application of the express terms of this contract and to the facts of the grievance presented." The Arbitrator can not interpret or apply any term of the collective bargaining agreement to these grievances.

The Employer has followed the requirements of **Article 21.1**. The Employer pays overtime to employees when they report early to a scheduled shift or work beyond the end of the scheduled shift or when they work on a day off. The Union did not establish with credible evidence that the Employer has paid overtime for hours worked in excess of 2080 in a calendar year. In fact, five of the grievants (Breunig, Dilley, Glaser, Kittelson and Robbins) failed to establish that they worked more than 2080 hours in 2004 and two of the grievants ((Tatge and Trick) worked 8 hour shifts. The normal number of hours worked per calendar year for employees on 8 hour shifts is 2096 hours. The grievants failed to establish that they worked hours in excess of the normal yearly schedule in 2004.

The definition of a normal schedule suggested by the Union would lead to an absurd result and would be inconsistent with the evidence presented at hearing. The interpretation would also be in violation **Section 7 (k)** of the **Fair Labor Standards Act** which provides a partial exemption for law enforcement employees from the requirement to pay overtime worked in excess of 40 hours. The contract term “normal schedule period” is a reference to the work period established in **Section 7 (k)** of the **FLSA**.

The Employer specifically notified the Union, during negotiations that overtime would be calculated in accordance with **Article 21.1** of the collective bargaining agreement and would discontinue using 2080 hours to determine whether employees owe time to the County or the County owes them pay or time off. The notice given by the Employer terminated the past practice relied upon by the Union.

The Union attempted to add language to the collective bargaining agreement that would require payment of overtime for all hours worked in excess of 2080 hours in a calendar year, during negotiations and through interest arbitration. The County did not agree to the proposal and the proposal was not adopted in the interest arbitration award. The Union should not be allowed to obtain through grievance arbitration what it failed to accomplish through negotiations or in interest arbitration

OPINION:

The Union is asking the arbitrator to interpret **Article 7** and **Article 21** of the collective bargaining agreement to mean that deputies should be paid overtime rates for all hours worked in a year in excess of 2080. The consolidated grievance asks for an interpretation of contract language. Thus, the substance of the grievance is arbitrable.

Article 5 defines a grievance as “...a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this contract.”

Pursuant to **Article 5.5 (A)** of the contract the arbitrator shall have no right to ... add to ...the terms and conditions of this Agreement. The collective bargaining agreement contains no requirement that the Employer must pay overtime for hours worked in a calendar year beyond 2080.

A proposal requiring the Employer to pay overtime to deputies for hours worked in excess of 2080 was submitted by the Union during negotiations. The Employer did not accept the proposal. The proposal was not incorporated into the contract in interest arbitration. It is fundamental that a party should not obtain through grievance arbitration what it was unable to obtain through negotiations or in interest arbitration.

There is no contractual basis upon which the deputies may claim a right to overtime pay for hours in excess of 2080 worked in a calendar year.

The past practice referenced by the Union in its argument was terminated by written notification during contract negotiations.

The grievances should be denied.

AWARD:

The grievances are hereby denied.

Dated: December 20, 2005

James A. Lundberg, Arbitrator